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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/955,507	09/18/2001	Donna J. Crowther	1999U033.US	1465

25959 7590 02/05/2003

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EXAMINER

RABAGO, ROBERTO

ART UNIT PAPER NUMBER

1713

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DATE MAILED: 02/05/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Advisory Action</b>	Application No. 09/955,507	Applicant(s) CROWTHER ET AL.
	Examiner Rob Rábago	Art Unit 1713

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

THE REPLY FILED 1/21/03 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a)  The period for reply expires 3 months from the mailing date of the final rejection.
- b)  The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1.  A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2.  The proposed amendment(s) will not be entered because:
  - (a)  they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b)  they raise the issue of new matter (see Note below);
  - (c)  they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d)  they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: see attachment.

3.  Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4.  Newly proposed or amended claim(s) \_\_\_\_\_. would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5.  The a) affidavit, b) exhibit, or c) request for reconsideration has been considered but does NOT place the application in condition for allowance because: the claims remain rejected for reasons of record.
6.  The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7.  For purposes of Appeal, the proposed amendment(s) a) will not be entered or b) will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: none.

Claim(s) objected to: 13.

Claim(s) rejected: 4-12 and 40.

Claim(s) withdrawn from consideration: 14-39.

8.  The proposed drawing correction filed on \_\_\_\_\_. is a) approved or b) disapproved by the Examiner.

9.  Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.

10.  Other: PTO-892

  
DAVID W. WU

SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1700

**Attachment to Advisory Action**

1. The amendment will not be entered because such entry would prompt a new ground of rejection over the Langhauser reference, wherein all of the claims previously rejected under 35 USC 102 would be newly rejected under 35 USC 103. The application of a new ground of rejection comprises further consideration, and will not be undertaken after final rejection.
  
2. Applicants have requested assistance in understanding the meaning of "metallocene" and "cyclopentadienyl" as commonly apprehended in the art. Attached hereto are sections of Organic Chemistry (Morrison and Boyd) and Hawley's Condensed Chemical Dictionary. Morrison and Boyd show the structure of cyclopentadienyl at the bottom of page 1199, and Hawley's describes metallocenes at page 718; these definitions fully and precisely support the statements contained in item 6 of the Office action mailed 4/4/2002. The section of the instant specification describing the metallocene-type compounds (section beginning at page 3, line 22), including the section added in the response of 7/26/02, intends that complexes comprising pentadiene, cyclooctatetraenyl and imide ligands, without any cyclopentadienyl ligands, are within the scope of "cyclopentadienyl-type" (as ligands) and "metallocene-type" as complexes. In view of the commonly accepted definitions of "cyclopentadienyl" or "metallocene", applicants' claims language is both indefinite and misleading to the ordinary skilled worker attempting to understand the actual scope of

the claims. Applicants are invited to provide an explanation of how the scope of "cyclopentadienyl-type" and "metallocene-type" differs from the commonly accepted meanings of "cyclopentadienyl" and "metallocene" as set forth in item 6 of the Office action mailed 4/4/2002.

3. Regarding Langhauser, applicants' argument has been previously addressed, and is repeated here: contrary to applicants' assertions, there is nothing in the claims or specification which precludes the structures set forth in the applied reference.

Applicants' own previously cited language supports the examiner's position (see item 9 of the response filed 7/26/2002), wherein the cited section reads: "... cyclic bridging group Ge may be represented by  $R^1_2Ge$  where the two  $R^1$ 's are joined to form a ring or ring system." Firstly, the language is open-ended (i.e., "may be represented by"). Secondly, the rejected claims fail to include the limitation wherein the two  $R^1$ 's are joined. Independent claim 4 merely states that "the two  $R^1$ 's form a cyclic ring or ring system with Ge". The corresponding  $R^1$ 's from the reference structure form a cyclic ring system with Ge, and the structure is therefore within the scope of the claims.

4. Applicants' repeated traversal arguments over the Winter reference have been fully addressed in the two prior Office actions.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rob Rábago whose telephone number is (703) 308-

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4347. The examiner can normally be reached on Monday - Friday from 9:30 am - 3:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wu can be reached at (703) 308-2450. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

Rob Rábago  
Examiner  
Art Unit 1713

RR   
January 27, 2003